

E-filed 3/27/06

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL REDD,	)	No. C 03-1814 JF (PR)
Petitioner,)	
	)	ORDER DENYING
vs.	)	CERTIFICATE OF
	)	APPEALABILITY; DENYING
	)	MOTION TO PROCEED IN
	)	FORMA PAUPERIS ON
JOE MCGRATH, WARDEN,	)	APPEAL; DENYING MOTION
	)	FOR APPOINTMENT OF
Respondent.	)	COUNSEL
	)	(Docket Nos. 28, 29, 30)

On February 27, 2006, this Court denied the instant petition for writ of habeas corpus on the merits and entered judgment in favor of Respondent. On March 20, 2006, Petitioner filed a notice of appeal and request for a certificate of appealability. Petitioner also filed a request to proceed in forma pauperis on appeal and a motion for appointment of counsel. The Court will DENY the certificate of appealability and DENY Petitioner's request to proceed in form pauperis and motion for appointment of counsel.

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Order Denying Certificate of Appealability; Denying Motion to Proceed in Forma Pauperis on Appeal; Denying Motion for Appointment of Counsel

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DISCUSSION

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. See *id.* § 2253(c)(3).

“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000).

Except for substituting the word “constitutional” for the word “federal,” section 2253(c)(2) codified the standard announced by the United States Supreme Court in *Barefoot v. Estelle*, 463 U.S. 880, 892-93 (1983). See *Slack*, 120 S. Ct. at 1603. In *Barefoot*, the Court explained that “a substantial showing of the denial of [a] federal right” means that a petitioner “must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner], or that the questions are adequate to deserve encouragement to proceed further.” 463 U.S. at 893 n.4 (citations and internal quotations omitted; emphasis in original). Any doubts about whether the *Barefoot* standard has been met must be resolved in petitioner’s favor. *Lambright v. Stewart*, 220 F.3d 1022, 1024-25 (9th Cir. 2000).

The Court denied the instant habeas petition after careful consideration of the merits. The Court found no violation of Petitioner’s federal constitutional rights in the underlying prison disciplinary proceedings. Petitioner has failed to demonstrate that jurists of reason would find it debatable whether this Court was correct in its ruling. Petitioner’s request for a certificate of appealability (docket no. 28) is DENIED.

1 Based upon the Court's denying the certificate of appealability, Petitioner's request to
2 proceed in forma pauperis on appeal and motion for appointment of counsel (docket nos.
3 29, 30) are DENIED. Petitioner may renew his requests with the Court of Appeals. The
4 Clerk shall terminate all pending motions and transmit the file, including a copy of this
5 order, to the Court of Appeals.

6 IT IS SO ORDERED.

7 DATED: 3/27/06


JEREMY FOGEL
United States District Judge

1 This is to certify a copy of this ruling was mailed to the following:

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